IN THE HIGH COURT OF DELHI

CM(M) No.1873/2006

Gyanender Prasad Tewari ..... Petitioner

! through: Mr.S.P. Pandey, Advocate

VERSUS

$ Om Prakash & Anr. ..... Respondents

^ through: Mr.B.K. Sharma and Mr.Yogesh Kumar Bhall, Advocates for respondent no.1.

RESERVED ON : 19.11.2007

% DATE OF DECISION: 26.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Vide impugned order dated 19.7.06 applications filed by the petitioner Gyanendra Prasad Tiwari and respondent No.2 Subhash Kumar Tiwari under Order I Rule 10 of the Code of Civil Procedure seeking impleadment of the petitioner as a defendant has been dismissed.

2. Relevant facts to be noted for the purpose of adjudication of the matter in issue within the confines of Order I

Rule 10 CPC are that the respondent no.2 (hereinafter referred to as the plaintiff) filed a suit for specific performance of an agreement to sell dated 18.6.90 with possession of plot bearing Muncipal No.325, Deepali, Pitam Pura, Delhi (hereinafter referred to as the suit property) against the respondent no.2 (hereinafter referred to as the defendant).

3. Material allegations in the plaint are that the defendant represented to the plaintiff that he is the sole and exclusive owner of the the suit property on the basis of a registered Will dated 13.2.1980 executed by the father of the defendant bequeathing the suit property in favour of the defendant and his elder brother i.e. the petitioner and that a relinquishment deed dated 28.5.90 was executed by the petitioner relinquishing all his rights and interest in the suit property in favour of the defendant. That original Will and the Relinquishment Deed were delivered by the defendant to the plaintiff. That after delivery of the said documents and believing the representation made by the defendant pertaining to the ownership of the suit property to be true the plaintiff entered into an agreement to sell dated 18.6.90 with the defendant for the sale of suit property for a total sale consideration of Rs.4,00,000/-. That pursuant to the said agreement a sum of Rs.1,95,000/- was paid by the plaintiff to

the defendant. That the balance sale consideration was to be paid by the plaintiff at the time of the execution and registration of the sale deed. That the defendant failed to perform its part of the obligations under the agreement. That the plaintiff was always ready and willing to perform its obligations under the agreement.

4. In the written statement filed by the defendant it was pleaded that the documents namely agreement to sell dated 18.6.90, will dated 13.2.80 and relinquishment deed dated 28.5.90 which formed the basis of the plaintiff's suit are forged and fabricated. That the defendant was not the sole and exclusive owner of the suit property. That the defendant and the petitioner were joint owners of the suit property. Relevant portions of the written statement of the defendant read as under :-

> "PRELIMINARY OBJECTIONS:
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> .....
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> 5. That the present suit has been filed by the plaintiff on the basis of false and forged documents which were never executed/handed over by the defendant to the plaintiff within his own knowledge, therefore, the present suit is liable to be dismissed.
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> .....
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> 7. That even otherwise the defendant being only the legal heir of Late Sh. Jagannath

> Prasad Tiwari and having only undivided share in the ancestral suit property, discredit the grant of relief of specific performance or possession or damages against him and in favour of the plaintiff.
>
> REPLY ON MERITS:
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> .....
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> 5. That para 5 of the plaint is wrong, baseless, concoted and emphatically denied. It is specifically denied that it was represented to the plaintiff that the elder brother of the defendant, namely, Sh. G.P. Tiwari had executed any relinquishment deed and muchless one dated 28.5.90 in favour of the defendant or that the defendant became owner of the suit plot as alleged. It is also particularly denied that the defendant entered into any agreement to sell with the plaintiff as alleged. It is respectfully submitted that no relinquishment deed was ever executed by Sh. G.P. Tiwari in favour of the defendant and they are still joint owners of the suit plot.
>
> ....."

5. Petitioner and respondent no.2 filed two independant applications seeking impleadment of the petitioner as a defendant by virtue of sub-rule 2 of Rule 10 of Order I of the Code of Civil Procedure.

6. Substantially, averments in the said applications are same as the averments made by the defendant in his written statement.

7. Paras 4, 5 and 6 of the application filed by the defendant read as under:-

> “4. The defendant/applicant further submits that the averments made in the plaint in all and the documents produced by the plaintiff are all fabricated and concocted. The defendant is also making a separate application under Section 340 Cr.P.C. setting out in detail all the relevant facts necessary for the adjudication on the issues raised by the defendant in the present application and the defense taken in the suit.
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> 5. That the applicant further submits that the suit property is an undivided property wherein the applicant/defendant and the elder brother of the defendant have got rights over the suit property as such the defendant cannot dispose off the property unilaterally and the plaintiff cannot claim any rights as falsely made out in the plaint.
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> 6. That as explained in detail in the application under section 340 CrPC, that the applicant and his brother have undivided share and the defendant's brother has not executed any relinquishment deed as fabricated by the plaintiff and the defendant's elder brother has neither executed any relinquishment deed nor they have entered into any sort of agreement with respect to the suit property either among themselves nor with the plaintiff.

8. Paras 4, 5, 6 and 7 of the application filed by the petitioner read as under:-

> “4. That by virtue of above Will, the applicant is the owner of the one half share of the above suit property measuring 400 sq. yards as mentioned and since the above suit is pending disposal before this Hon'ble Court and applicant's interest is involved in the above suit property and applicant is necessary and interested party in the above noted suit.
>
> 5. That the defendant has secretly and

> alone has no right whatsoever to sale the above suit property without consulting the applicant and the plaintiff has also no right to purchase the above suit property in which the applicant is the owner of the one half share of the suit property.
>
> 6. That the plaintiff with vested interest has filed the above suit to commit a fraud on the defendant as well as with the applicant or they might be committing fraud in collusion with the applicant to rob of his valuable property.
>
> 7. That the alleged Relinquishment Deed dated 28.05.1990 is a forged and the applicant has never executed any such Relinquish Deed in favour of the defendant which is produced by plaintiff which is also on the record."

9. After considering the respective stands of the parties, vide impugned order dated 19.07.06 the learned Trial Judge had dismissed the said applications.

10. In support of the petition, learned counsel for the petitioner had contended that the matter in controversy in a suit has to be considered not only with reference to the case set up in the plaint but even the defence set up in the written statement. It was urged that the defendant has categorically pleaded that the documents relied upon by the plaintiff are forged and fabricated and that the defendant and petitioner are the joint owners of the suit property. That in view of the defence taken by the defendant the petitioner is a necessary party and is entitled to be impleaded as a defendant in the suit as he would be affected by the decision in the suit.

11. Per contra, learned counsel for the plaintiff/respondent no.1 had contended that a plaintiff is a dominus litus and cannot be compelled to litigate against a person qua whom no relief has been prayed for. Counsel further urged that the expression “all the questions involved in the suit” means only the questions or disputes between the parties to the dispute and do not include a question or dispute between one or more of the parties and a third party. That the petitioner is neither a necessary nor a proper party, nor his presence is necessary before the Court in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.

12. Learned Counsel for the plaintiff relied upon the following authorities :-

i. *Panne Khushali & Anr v Jeewanlal Mathoo Khatik & Anr* AIR 1976 MP 148 (FB) : In said case, it was held that the strangers to the contract making a claim adverse to the title of the defendant (vendor) contending that they are the co-owners of the contracted property are neither necessary nor proper party and are therefore not entitled to be joined as parties to the suit.

ii. *Ram Bilash Pandey & Ors v Jai Narayan Gupta & Ors* AIR 1984 Pat 218 : In the said case, a suit for specific

performance of contract for sale entered into by certain members of a joint Hindu family was filed. Other members of the family claimed to be impleaded on the ground that the property which was sought to be sold was joint family property and that it was acquired with joint family funds. Noting the decision in *Panne* Kushali's case (supra) and the fact result of the decree even if adverse to intervenors shall not bind the intervenors, it was held that the members claiming to be impleaded were neither necessary party nor proper party to the suit and could not be given benefit of Order I Rule 10(2) of the CPC.

iii. *Anil Kumar Singh v Shivnath Mishra* (1995) 3 SCC 147 and *Kasturi v Iyyamperumal* AIR 2005 SC 2813 : In said cases, it was held that the intervenors who are not party to the agreement of sale are not necessary party to the suit for specific performance for the reason their presence is not necessary in order to determine the dispute as to specific performance.

13. Learned counsel for the petitioner relied upon the following judgments :-

i. *Sumtibai & Ors v Paras Finance Co.* JT 2007 (11) SC 749 : In said case, noting the decision in *Kasturi*'s case (supra), the Supreme Court has observed as under :-

> “9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in **Kasturi** v. **Iyyamperumal and Ors.**. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance **if he has no semblance of title in the property in dispute**. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute.....”
>
> 14. In view of the aforesaid decisions we are of the opinion that **Kasturi's** case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by **A** against **B**, a third party **C** can never be impleaded in that suit. In our opinion, if **C** can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then **C** will have to wait until a decree is passed against **B**, and then file a suit for cancellation of the decree on the ground that **A** had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

ii. *Dinesh Kumar Gupta v Manish Kumar* FAO No.545/01 decided on 08.05.02 : In said case, appellants sought impleadment in a suit for specific performance of an agreement to sell on the ground that the defendant had

entered into an earlier agreement to sell with them with respect to same property. Holding that the appellants are proper parties to the suit, the Division Bench of this Court allowed the appeal.

14. Before proceeding to discuss the legal position it is important to note the relevant statutory provision. Order I Rule 10(2) of the Code of Civil Procedure reads as under :-

> "(2) **Court may strike out or add parties :-** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and '*settle all the questions involved in the suit, be added*'."

15. A reading of the statutory provision shows that the sweep of the legislative provision is controlled by the expression '*settle all the questions involved in the suit, be added*'. Meaning thereby, an inquiry under Order I Rule 10(2) is not to focus on whether the applicant is a person who ought to have been joined as a necessary party to the suit. The focus of inquiry is limited to the question whether the applicant could be impleaded on the premise that his presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle the questions

involved in the suit.

16. A perusal of the commentaries under Order I Rule 10 of the Code of Civil Procedure reveal a plethora of decisions which have considered the ambit of the power of the Court in impleading a person as a proper party. The authorities have explained the meaning of the phrase '*all the questions involved in the suit*'.

17. The decisions illustrate a wide spectrum of instances when intervention was allowed and when refused.

18. From the decisions, no discernible principle governing the discretionary power of the Court emerges, for the simple reason, the spectrum of claims is fairly wide and therefore it would be inadvisable to cast the discretionary power in a straight jacket of an inflexible formula. However, one principle emerges, that the language employed in the rule vests a very wide discretion in the Court.

19. In the leading case of *Razia Begum v Anwar Begum* AIR 1958 SC 886 the Supreme Court had laid down the following principles regarding the power of the Court to implead parties by virtue of Rule 10(2) of the Code of Civil Procedure :-

> "20. As a result of these considerations, we have arrived at the following conclusions :-
>
> (1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil

> Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in section 115 of the Code;
>
> (2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation;
>
> (3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy;
>
> (4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of sections 42 and 43 of the Specific Relief Act;
> ....."

20. A reference may also be made to the decision of the Supreme Court reported as *Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay* 1992 (2) SCC 224. In the said case, the plaintiff was a dealer on the land held by the Hindustan Petroleum Corporation and was in possession of a service station. The Municipal Corporation issued a notice to the plaintiff for demolition of a certain construction alleging

that it was unauthorized. The plaintiff filed a suit for permanent injunction against the Municipal Corporation. Hindustan Petroleum applied for being impleaded as a defendant on the ground that it had material to show that the structure was unauthorized. The prayer was granted by the Courts below. The plaintiff approached the Supreme Court. Allowing the appeal and setting aside the order, the Supreme Court held that the Hindustan Petroleum Corporation was neither necessary nor proper party to the proceedings. It was held that the person to be joined must be one whose presence is necessary as a party. The test is not whether his presence is necessary for the correct solution of the dispute before the Court but whether the order would affect him or his interest would be prejudiced. Relevant discussion is being noted herein below:-

> "6. Sub-rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of

all the facts and circumstances of a particular case.

8. The case really turns on the true construction of the Rule in particular the meaning of the words "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the

> person must be directly or legally interested in the action in the answer, i.e. , he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:
>
> The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'

21. The test which is to be applied while considering an application under Order I Rule 10(2) of the Code of Civil Procedure for impleadment of a party has been summarised in the decision of the Madhya Pradesh High Court reported as *Sampatbai v Madhusingh Gambhirji* AIR 1960 MP 84 :-

> "The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his rights. It is not enough that the plaintiff's rights, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject-matter. The intervener must be directly and legally interested in the answers

> to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally -- that is by curtailing his legal rights. This is the test which has been applied in Amon v. Raphael Tuck and Sons Ltd., 1956-1 All ER 273, in connection with R. S. C. Order 16, Rule 11 which is similar to Order 1, Rule 10, C. P. C. Again as pointed out in Dollfus Mieg et Compagnie S. A. v. Bank of England, 1950-2 All ER 605 at p. 611, in determining whether or not an applicant has a proprietary right in the subject matter of an action sufficient to entitle him to be joined as a defendant
>
> "the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established".

22. Turning to the facts of the instant case, it is the pleaded in the plaint that the defendant represented to the plaintiff that he is the sole and exclusive owner of the suit property. In support whereof, reliance has been placed on the Will dated 13.2.80 and the Relinquishment Deed 28.5.90.

23. As already noted, in the written statement filed by the defendant, a categorical plea has been taken that he and the petitioner are the joint owners of the suit property. That the defendant never executed any agreement to sell in respect of the suit property. That the petitioner never executed any Relinquishment Deed relinquishing his rights and interest in the suit property in favour of the defendant.

24. Thus, the instant suit revolves around the following two issues :-

i. Whether the defendant executed the agreement to sell dated 18.6.90?

ii. Whether the defendant was the sole and exclusive owner of the suit property? As regards decision on this issue, it is necessary to determine whether the petitioner executed the Relinquishment Deed date 28.5.90 relinquishing all his rights and interests in the suit property in favour of the defendant.

25. An analysis of the allegations in the plaint and the defence taken in the written statement shows that the issue of ownership of the suit property is the subject-matter of the suit or in other words is a '*question involved in the suit*'.

26. Issue of ownership of the suit property is the subject-matter of the suit and that since petitioner is claiming to be the co-owner of the suit property to the extent of ½ share in the suit property he would be affected by the decision in the suit and hence is a necessary party.

27. If the impleadment sought for by the petitioner is allowed, neither the nature of the suit would be changed nor the controversy in the suit would be widened.

28. In view of the above discussion I hold that the petitioner is entitled to be impleaded as a defendant in the

present suit.

29. The impugned order dated 19.07.06 is set aside. Application for impleadment of the petitioner is allowed.

30. No costs.

November 26, 2007 **(PRADEEP NANDRAJOG)**
sl **JUDGE**